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SENATE BILL 829

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Gerald P. Ortiz y Pino

AN ACT

**RELATING TO LAW ENFORCEMENT; ENABLING LOCAL GOVERNMENTS TO
ESTABLISH LAW ENFORCEMENT REVIEW BOARDS; ESTABLISHING MINIMUM
CRITERIA FOR SELECTING A LAW ENFORCEMENT REVIEW BOARD;
ENUMERATING POWERS AND DUTIES OF A LAW ENFORCEMENT REVIEW
BOARD; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. [NEW MATERIAL] SHORT TITLE. --Sections 1
through 5 of this act may be cited as the "Law Enforcement
Review Board Act".**

**Section 2. [NEW MATERIAL] DEFINITIONS. --As used in the
Law Enforcement Review Board Act:**

**A. "administrative review" means an investigation
that includes interviews, and review of records and other
documents;**

1 B. "aggravated excessive force" means a degree of
2 forcefulness that is not justified under the circumstances and
3 that results in hospitalization of an arrestee;

4 C. "arrestee" means a person who files a complaint;

5 D. "chief supervisory official" means the senior
6 position of a law enforcement agency, including a chief of
7 police, a sheriff or the secretary of public safety;

8 E. "complaint" means a written allegation made on
9 behalf of an arrestee against a law enforcement officer,
10 whether filed with a review board or a law enforcement agency;

11 F. "cooperation" means responding to, appearing
12 before and answering the administrative inquiry of a review
13 board;

14 G. "dishonorable conduct" includes habitual or
15 excessive use of intoxicants or drugs; swearing at an arrestee;
16 fraud or misrepresentation; use of a false, fraudulent or
17 deceptive statement in a document connected with an application
18 for a law enforcement academy or law enforcement agency;
19 extortion; failure to cooperate with a review board or to
20 furnish the review board, its investigators or representatives
21 with information requested by the board; sexual contact with a
22 subject or an arrestee; and soliciting or receiving a bribe;

23 H. "excessive force" means a degree of forcefulness
24 beyond the need and circumstances of a particular event or one
25 that is not justified in light of all the circumstances whether

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1 or not the force results in death;

2 I. "law enforcement agency" means the department of
3 public safety, a county sheriff's department and peace
4 officers, a police department or any other law enforcement
5 agency of the state or a political subdivision of the state,
6 including one authorized by state law or by municipal or county
7 ordinance;

8 J. "law enforcement officer" means a
9 present or former employee, person on contract with or
10 volunteer for a law enforcement agency that is responsible for
11 prevention and detection of crime and enforcement of the penal,
12 traffic or highway laws of the state; and

13 K. "review board" means a board that is charged
14 with overseeing the conduct of a law enforcement agency and its
15 law enforcement officers on behalf of the community.

16 Section 3. [NEW MATERIAL] AUTHORITY TO ESTABLISH A REVIEW
17 BOARD.--The state or a political subdivision of the state,
18 including a home rule municipality, may establish a law
19 enforcement review board comprised of elected or appointed
20 representatives; provided that the review board is:

21 A. independent of a law enforcement budget and
22 supervisory chain of command; and

23 B. comprised of residents of the political
24 subdivision under which the review board is organized; provided
25 that a member may not be:

(1) the spouse, parent or child of a law

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1 enforcement officer; or

2 (2) an employee or a former employee of a law
3 enforcement agency not separated by a period of at least two
4 years from employment with the law enforcement agency.

5 Section 4. [NEW MATERIAL] POWERS AND DUTIES OF A REVIEW
6 BOARD. --

7 A. A review board shall:

8 (1) comply with the Inspection of Public
9 Records Act;

10 (2) report its findings of a sustained
11 complaint to the chief supervisory official of the relevant law
12 enforcement agency and, in the case of a state police officer,
13 to the public safety advisory commission;

14 (3) report to the district attorney or
15 attorney general the finding of a sustained complaint that
16 indicates a criminal offense may have occurred; and

17 (4) keep personnel records confidential to the
18 extent required by law.

19 B. A review board may:

20 (1) develop and recommend law enforcement
21 policy to preserve and promote the peace while respecting the
22 civil rights of the general public;

23 (2) receive and administratively review a
24 complaint filed against a law enforcement officer for unethical
25 behavior, dishonorable conduct, a civil rights violation or

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- 1 excessive force;
- 2 (3) accept and investigate a complaint;
- 3 (4) conduct an administrative review that
- 4 requires the cooperation and appearance of a law enforcement
- 5 officer;
- 6 (5) make a finding that a complaint is
- 7 unfounded or sustained; and
- 8 (6) determine disciplinary sanctions for a law
- 9 enforcement officer against whom a complaint was sustained,
- 10 including a recommendation for administrative reassignment,
- 11 reprimand or a notation in the law enforcement officer's
- 12 personnel file.

13 Section 5. ~~[NEW MATERIAL]~~ LAW ENFORCEMENT CONTRACTS
14 AFFECTING THE FINDING OF A REVIEW BOARD. -- A law enforcement
15 agency or chief supervisory official shall not enter into a
16 personnel contract that impairs the ability of a law
17 enforcement agency or chief supervisory official to remove a
18 law enforcement officer from public contact for a period of up
19 to six months when a complaint is sustained by a review board.

20 Section 6. Section 3-13-2 NMSA 1978 (being Laws 1965,
21 Chapter 300, Section 14-12-2, as amended) is amended to read:

22 "3-13-2. POLICE OFFICERS. --

23 A. The police officer of a municipality shall:

- 24 (1) execute and return all writs and process
- 25 as directed by the municipal judge of the municipality

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1 employing the police officer;

2 (2) execute and return all criminal process as
3 directed by the municipal judge of any incorporated
4 municipality in the state if the criminal process arises out of
5 a charge of violation of a municipal ordinance prohibiting
6 driving while under the influence of intoxicating liquor or
7 drugs;

8 (3) serve criminal writs and process specified
9 in Paragraphs (1) and (2) of this subsection in any part of the
10 county wherein the municipality is situated; and

11 (4) within the municipality:

12 (a) suppress all riots, disturbances and
13 breaches of the peace;

14 (b) apprehend all disorderly persons;

15 (c) pursue and arrest any person fleeing
16 from justice; and

17 (d) apprehend any person in the act of
18 violating the laws of the state or the ordinances of the
19 municipality and bring him before competent authority for
20 examination and trial.

21 B. A police officer shall cooperate with a law
22 enforcement review board.

23 [~~B.~~] C. In the discharge of his proper duties, a
24 police officer shall have the same powers and be subject to the
25 same responsibilities as sheriffs in similar cases. "

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1 Section 7. Section 29-1-9 NMSA 1978 (being Laws 1891,
2 Chapter 60, Section 1, as amended) is amended to read:

3 "29-1-9. APPOINTMENT OF PEACE OFFICERS--CITIZENSHIP--
4 CERTIFICATE OF APPOINTMENT--EXCEPTIONS.--No sheriff of a
5 county, mayor of a city or other person authorized by law to
6 appoint special deputy sheriffs [~~special constables~~], marshals,
7 policemen or other peace officers in the state [~~of New Mexico~~]
8 to preserve the public peace and to prevent and quell public
9 disturbances shall appoint as [~~such~~] a special deputy sheriff
10 [~~special constable~~], marshal, policeman or other peace officer
11 any person who [~~shall~~] is not [~~be~~] a citizen of the state [~~of~~
12 ~~New Mexico~~], and no person shall assume or exercise the
13 functions, powers, duties and privileges incident and belonging
14 to the office of special deputy sheriff [~~special constable~~],
15 marshal or policeman or other peace officer without first
16 having received his appointment in writing from the lawfully
17 constituted authorities of the state [~~of New Mexico~~]; provided
18 that nothing in this section shall apply to lawfully appointed
19 United States marshals or to deputies of [~~any such~~] those
20 marshals or to railroad peace officers appointed pursuant to
21 Section 63-2-18 NMSA 1978 in the performance of their duties as
22 peace officers. A law enforcement review board's finding that
23 a complaint has been sustained against a law enforcement
24 officer shall be cause to prohibit appointment of the law
25 enforcement officer under this section for a period of up to

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1 six months.

2 This section shall not apply in times of riot or unusual
3 disturbance and when so declared by the public proclamation of
4 the governor of the state. "

5 Section 8. Section 29-2-6 NMSA 1978 (being Laws 1941,
6 Chapter 147, Section 6, as amended) is amended to read:

7 "29-2-6. QUALIFICATIONS OF MEMBERS. --

8 A. Members of the New Mexico state police, except
9 the chief, shall:

10 (1) at the time of their appointment, be
11 citizens of the United States;

12 (2) at the time of their appointment, have
13 reached twenty-one years of age;

14 (3) at the time of their appointment:

15 (a) have completed not less than sixty
16 hours of college credit; or

17 (b) have completed not less than thirty
18 hours of college credit and, no later than two years following
19 appointment, have completed not less than an additional thirty
20 hours of college credit;

21 (4) be of good moral character and not have
22 been convicted of a felony or infamous crime in the courts of
23 this state or other state or any country or in the federal
24 courts or have a finding of a sustained complaint from a law
25 enforcement review board within the past six months; and

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1 (5) pass a physical examination the New Mexico
2 state police may require.

3 B. A person shall not be commissioned a member of
4 the New Mexico state police who is related by blood or marriage
5 within the fourth degree to a member of the public safety
6 advisory commission. "

7 Section 9. Section 29-2-7 NMSA 1978 (being Laws 1941,
8 Chapter 147, Section 7, as amended) is amended to read:

9 "29-2-7. COMMISSIONED OFFICERS--APPLICATION--PROCEDURE. --
10 The New Mexico state police shall cause all applicants for the
11 position of commissioned officer to submit a written detailed
12 application on [such] forms as the [board] secretary shall
13 prescribe, and the [board] secretary shall cause an
14 investigation to be made of all applicants, subsequent to their
15 taking the examination [hereinafter] referred to in Section
16 29-2-8 NMSA 1978, for the purpose of determining the moral
17 character, general reputation and fitness of any applicant.
18 [~~and. Any such~~] An applicant who is found unfit as a result of
19 [~~such~~] the investigation shall be disqualified for employment.
20 An applicant against whom a law enforcement review board has
21 sustained a complaint shall be unfit for a period of six
22 months. The [board] secretary shall by rule prescribe the
23 physical qualifications of applicants and shall require each
24 applicant to submit to a physical examination by such doctors
25 as the [board] secretary shall designate. [~~and. Any~~] An

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1 applicant who does not meet the physical requirements
2 prescribed by the ~~[board]~~ secretary shall be disqualified for
3 employment. Inasmuch as laws have been enacted providing for
4 retirement, disability and life insurance funds for members of
5 the New Mexico state police, it is the intention of the
6 legislature that no applicants will be appointed who are in
7 such physical condition that the cost of such protection will
8 thereby be increased. "

9 Section 10. Section 29-2-11 NMSA 1978 (being Laws 1941,
10 Chapter 147, Section 11, as amended) is amended to read:

11 "29-2-11. DISCIPLINARY PROCEEDINGS--APPEAL. --

12 A. No officer of the New Mexico state police
13 holding a permanent commission shall be removed from office,
14 demoted or suspended except for incompetence, neglect of duty,
15 violation of a published rule of conduct, malfeasance in office
16 or conduct unbecoming an officer, except as provided in this
17 section.

18 B. The secretary may suspend an officer for
19 disciplinary reasons ~~[for not more than thirty days]~~ in
20 accordance with New Mexico state police rules. Any officer
21 holding a permanent commission who is suspended by the
22 secretary has the right to have the suspension reviewed by the
23 commission ~~[but without further review or appeal]~~.

24 C. In the event the officer is to be removed from
25 office, demoted or suspended for a period of more than thirty

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1 days, specific written charges shall be filed with the
2 commission. Timely and adequate notice of the charges to the
3 person charged shall be provided and a prompt hearing on the
4 charges shall be held by the commission. The person charged
5 has the right to be represented by counsel of ~~[his own]~~ the
6 person's choice and at ~~[his]~~ the person's own expense at the
7 hearings. A complete record of the hearing shall be made and,
8 upon request, a copy of it shall be furnished to the person
9 charged. The person may require that the hearing be public.

10 D. In the event the commission finds that the
11 person charged shall be removed, demoted or suspended for a
12 period in excess of thirty days, the person may appeal from the
13 decision of the commission to the district court pursuant to
14 the provisions of Section 39-3-1.1 NMSA 1978.

15 E. The commission shall consider a law enforcement
16 review board's finding of a sustained complaint in issuing
17 discipline. "

18 Section 11. Section 29-7-6 NMSA 1978 (being Laws 1993,
19 Chapter 255, Section 6) is amended to read:

20 "29-7-6. QUALIFICATIONS FOR CERTIFICATION. --

21 A. An applicant for certification shall provide
22 evidence satisfactory to the board that he:

23 (1) is a citizen of the United States and has
24 reached the age of majority;

25 (2) holds a high school diploma or the

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1 equivalent;

2 (3) holds a valid driver's license;

3 (4) has not been convicted of or pled guilty
4 to or entered a plea of nolo contendere to any felony charge
5 or, within the three-year period immediately preceding his
6 application, to any violation of any federal or state law or
7 local ordinance relating to aggravated assault, theft, driving
8 while intoxicated, controlled substances or other crime
9 involving moral turpitude and has not been released or
10 discharged under dishonorable conditions from any of the armed
11 forces of the United States;

12 (5) has not had a complaint for a civil rights
13 violation or use of excessive force sustained against him by a
14 law enforcement review board in the past two years;

15 [~~(5)~~] (6) after examination by a licensed
16 physician, is free of any physical condition that might
17 adversely affect his performance as a police officer or
18 prohibit him from successfully completing a prescribed basic
19 law enforcement training required by the Law Enforcement
20 Training Act;

21 [~~(6)~~] (7) after examination by a certified
22 psychologist, is free of any emotional or mental condition that
23 might adversely affect his performance as a police officer or
24 prohibit him from successfully completing a prescribed basic
25 law enforcement training required by the Law Enforcement

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1 Training Act;

2 [~~(7)~~] (8) is of good moral character;

3 [~~(8)~~] (9) has met any other requirements for
4 certification prescribed by the board pursuant to regulations
5 adopted by the board; and

6 [~~(9)~~] (10) has previously been awarded a
7 certificate of completion by the director attesting to the
8 applicant's completion of an approved law enforcement training
9 program.

10 B. A person employed as a police officer by any law
11 enforcement agency in this state shall forfeit his position
12 unless, no later than twelve months after beginning his
13 employment as a police officer, the person satisfies the
14 qualifications for certification set forth in Subsection A of
15 this section and is awarded a certificate attesting to that
16 fact. "

17 Section 12. Section 29-7-10 NMSA 1978 (being Laws 1971,
18 Chapter 247, Section 4, as amended by Laws 1981, Chapter 107,
19 Section 1 and also by Laws 1981, Chapter 114, Section 10) is
20 amended to read:

21 "29-7-10. CERTIFICATION BY WAIVER. - -

22 A. The director shall, with the approval of the
23 board, waive the basic law enforcement training program and
24 certify applicants who are employed as full-time police
25 officers and who furnish evidence of satisfactory completion of

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1 a basic law enforcement training program which is comparable to
2 or exceeds the standards of the programs of the academy and who
3 have no finding of a sustained complaint by a law enforcement
4 review board in the past six months.

5 B. All individuals allowed a waiver under this
6 section [~~must~~] shall meet the requirements set out in the Law
7 Enforcement Training Act, and this section shall not be
8 construed to exempt them from [~~such~~] those requirements in any
9 manner. "

10 Section 13. Section 29-7-13 NMSA 1978 (being Laws 1993,
11 Chapter 255, Section 10) is amended to read:

12 "29-7-13. REFUSAL, SUSPENSION OR REVOCATION OF
13 CERTIFICATION. --

14 A. After consultation with the employing agency,
15 the board may refuse to issue or may suspend or revoke a police
16 officer's certification when the board determines that a person
17 has:

18 (1) failed to satisfy the qualifications for
19 certification, set forth in Section 29-7-6 NMSA 1978;

20 (2) committed acts that constitute dishonesty
21 or fraud;

22 (3) been convicted of, pled guilty to or
23 entered a plea of no contest to:

24 (a) any felony charge; or

25 (b) any violation of federal or state

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1 law or a local ordinance relating to aggravated assault, theft,
2 driving while under the influence of intoxicating liquor or
3 drugs, controlled substances or any law or ordinance involving
4 moral turpitude;

5 (4) knowingly made any false statement in his
6 application for certification; or

7 (5) been found by a law enforcement review
8 board to have a sustained complaint of a civil rights violation
9 or use of excessive force.

10 B. The board shall develop, adopt and promulgate
11 administrative procedures for suspension or revocation of a
12 police officer's certification that include notice and an
13 opportunity for the affected police officer to be heard, as
14 well as procedures for review of the board's decision. "

15 Section 14. Section 33-1-11 NMSA 1978 (being Laws 1981,
16 Chapter 132, Section 2, as amended) is amended to read:

17 "33-1-11. CORRECTIONAL OFFICER QUALIFICATIONS. -- Members
18 of the corrections department correctional officer force,
19 excluding correctional specialists, shall:

20 A. at the time of their appointment, be citizens of
21 the United States;

22 B. at the time of their appointment, have reached
23 age of majority;

24 C. have at least a high school education or its
25 equivalent;

